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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

RON RICE and DONITA RICE,)	CASE NO. 10-6272-HO
)	
Plaintiffs,)	ORDER
)	
vs.)	
)	
JP MORGAN CHASE BANK, N.A., ,)	
)	
Defendant.)	
_____)	

Introduction

Plaintiffs, Ron and Donita Rice, appearing *pro se*, seek a preliminary injunction and a temporary restraining order (TRO) against defendant JP Morgan Chase Bank NA (JP Morgan). [#5]. They bring suit alleging thirteen claims: breach of contract, breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, negligence, common law fraud, criminal conspiracy and theft, predatory loan practices, fraudulent collection on a void lien, false fees charged, violation of the

Real Estate Settlement Procedures Act (RESPA), the Truth in Lending Act (TILA), and Intentional Infliction of Emotional Distress (IIED). [#1- Plaintiffs' Petition]

Plaintiffs seek an "emergency restraining order enjoining lender and any successor in interest from foreclosing on [plaintiffs'] property"; "a permanent injunction enjoining defendant from engaging in fraudulent deceptive, predatory and negligent acts and practices;" "for quiet title" to the subject property;" "rescission of the loan contract and restitution by defendant;" "disgorgement of all amounts wrongfully acquired;" "monetary damages in the amount of \$546,675.52;" pain and suffering due to extreme mental anguish in an amount to be determined at trial;" pre and post-Judgment interest; "punitive damages" of "\$1,640,026.56;" and attorney fees and costs (although they are not presently represented). [#1].

Plaintiffs have been ordered to serve defendant JP Morgan but to date there is no indication that they have served the defendant. [#6]. Recognizing the serious nature of plaintiff's allegations, this court granted plaintiffs' initial Motion for a Temporary Restraining order [TRO],[#3], ordering the foreclosure sale restrained until the hearing set for September 7, 2010. *Id.*

Plaintiffs Motion for a Preliminary Injunction is currently before this court. [#5]. Plaintiffs' motion alleges that their house was scheduled for a non-judicial foreclosure auction on

August 30, 2010, [#3, #5]. Their 26-page motion seeks to prevent the defendant from "foreclosing on and selling the property until and unless it prevails in the current litigation;" to "award costs" and "enter judgment for Plaintiff." [#5-p.25].

Discussion

Ron Rice and Donita Rice (plaintiffs) appearing *pro se* are in a dispute with their mortgage lender, JP Morgan, the details of which are not entirely clear. The subject property, which appears to be their home, is located at 1493 NW Quincy Ave, Bend, Oregon 97701. [#5-p.1]. Plaintiffs appear to have financed (or refinanced), their Bend home with a loan from JP Morgan Chase Bank for \$546,675.52 at a 30-year fixed rate of 7.2981%. [#1-pp. 3, 13, 18]. Plaintiffs complain that they were "induced" to enter into "a predatory loan agreement" in which defendant allegedly "committed numerous acts of fraud . . . in furtherance of a carefully crafted scheme intended to defraud" them, charged them "false fees at settlement and "failed to make proper notices" to plaintiffs that "would have given [them] warning of the types of tactics used by defendant to defraud" them and to "compensate agents of [plaintiffs] to induce [those agents] to breach their fiduciary duty" to plaintiffs. [#5-p.1].

Plaintiffs contend that the collection proceedings against them are frivolous because despite their request, they never received production of the original promissory note that allegedly

creates the debt. [#5-p.2]. They further allege that the lender has no legal standing to bring collection proceedings or foreclosure claims against them because it is not a "real party in interest in any contract which can claim a collateral interest in the property" and even if it were to prove a valid contract it had standing to enforce, no "valid lien exists" because the "contract was fraudulent in its creation as endorsement was secured by acts of negligence, common law fraud, fraud by non-disclosure, fraud in the inducement, fraud in the execution, usury and breaches of contractual and fiduciary duties" by "the mortgagee". [#5-p.6].

Plaintiffs' motion consists mostly of editorial comments rather than details of their loan, when or why they ran into difficulties making payments or how many payments they have failed to make or what notice they were given. Similarly, none of the relevant documents have been attached to their filings.

To the extent that plaintiffs' claims can be discerned, it appears that they base their claims of breach of good faith and fair dealing on the defendant's alleged failure to: (1) provide the proper disclosures regarding the loan product the Rices were buying; (2) provide accurate right to cancel notices; (3) prevent plaintiffs from being placed in a more affordable loan product; (4) follow proper underwriting standards; (5) disclose that plaintiffs would default because their loan would be unaffordable; (6) perform valid or properly documented substitutions and

assignments so that plaintiffs could ascertain their rights and duties; (7) respond in good faith when plaintiffs requested documentation and (8) properly initiate foreclosure proceedings. [#5-p.22].

There is no response from defendant JP Morgan thus far, most likely because they have not been served.

1. Notice to defendants required:

Pursuant to Fed. R. Civ. 65(a), "[n]o preliminary injunction shall be issued without notice to the adverse party." Similarly, Fed. R. Civ. P. 65(b) prohibits the entry of a temporary restraining order without notice to the adverse party absent a showing of "the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required." Neither plaintiffs' Motion for a TRO¹ nor their Motion for Preliminary Injunction include a certificate of service. [#3; #5]. Plaintiffs' allegations that notice is not required in this case are supported solely by a self-serving statement contained in their motion alleging that, they will suffer "immediate and irreparable injury" if the sale "is allowed to take place." [#5-p.24].

While there is no doubt that it is an extreme hardship to be evicted from one's home, plaintiffs have failed to submit any

¹ Previously granted by this court on August 25, 2010.. [#6].

evidence showing that such an event is likely to occur any time soon or indeed, at all. Nor have they submitted any evidence upon which they could base rightful ownership of the subject property, or indicating that they might prevail in this matter.

This lack of documentation makes it impossible to ascertain what has taken place, where plaintiffs are in the foreclosure proceedings, if they were given appropriate notice(s) and what action (if any) they took as a result of the notice given to them. Compounding the lack of information before the court, plaintiffs failed to appear at the hearing set for this matter on September 7, 2010 at 10:45 am. [#6] Even if the balance of hardships tips sharply in plaintiff's favor, it must be shown as an irreducible minimum that there is a fair chance of success on the merits. *Stanley v. University of Southern California*, 13 F.3d at 1313, 1319. (1994). Thus far there is none in the current record.

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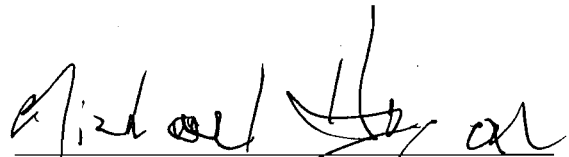
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Conclusion

Given the complete lack of evidence to support a finding that extraordinary circumstances exist warranting plaintiffs' motion for an *ex parte* preliminary injunction, I hereby DENY plaintiff's motion. [#5]. .

IT IS SO ORDERED.

DATED this 8th day of September, 2010.


United States District Judge